

The Honorable Benjamin Settle

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

CLYDE RAY SPENCER, MATTHEW
RAY SPENCER, and KATHRYN E.
TETZ,

Plaintiffs,

v.

FORMER DEPUTY PROSECUTING
ATTORNEY FOR CLARK COUNTY
JAMES M. PETERS, DETECTIVE
SHARON KRAUSE, SERGEANT
MICHAEL DAVIDSON, CLARK
COUNTY PROSECUTOR'S OFFICE,
CLARK COUNTY SHERIFF'S
OFFICE, THE COUNTY OF CLARK
and JOHN DOES ONE THROUGH
TEN,

Defendants.

NO. C11-5424BHS

DEFENDANT PETERS' JOINDER
TO OPPOSITION TO PLAINTIFF'S
MOTION UNDER RULE 56(d) AND
REPLY RE: HIS MOTION FOR
SUMMARY JUDGMENT

NOTED FOR: June 22, 2012

A. Mr. Spencer Has Not Met His Burden Under Rule 56(d)

Defendant James M. Peters hereby joins in the opposition to Plaintiff Clyde Spencer's motion under Fed R. Civ. P. 56(d) as submitted by Defendant Sharon Krause (ECF No. 83 at 3:10-5:22), Shirley Spencer (ECF No. 82 at 2:5-14), and Defendant Michael Davidson (ECF No. 80 at 2:15-19, and 12:9-10; and ECF Nos. 81 and 81-1). Mr. Spencer has not met his burden under Rule 56(d) and his motion should be denied.

B. Mr. Peters Is Entitled to Absolute, as Well as Qualified Immunity

In addition, as argued in his opening memorandum, Mr. Peters, as former deputy prosecuting attorney, is entitled to absolute immunity. ECF No. 68 at 12:15-18:3. This includes the videotaped interview of Kathryn (Spencer) Tetz in December 1984, done just prior to charging. *See Imbler v. Pachtman*, 424 U.S. 409, 96 S. Ct. 984, 47 L. Ed. 2d 128 (1976). Official immunity, whether qualified or absolute, is “an *immunity from suit* rather than a mere defense to liability.” *Mitchell v. Forsyth*, 472 U.S. 511, 526, 105 S. Ct. 2806, 86 L. Ed. 2d 411 (1985) (citing *Harlow v. Fitzgerald*, 457 U.S. 800, 817, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982)) (emphasis in original). Mr. Peters is also entitled to qualified immunity. ECF No. 68 at 18:4-21:9. No further discovery is needed or permitted to resolve these issues.

C. The State Claims Against Mr. Peters Are Time-Barred

Mr. Peters’ motion is also based on statute of limitations, including the two-year statute of limitations applying to defamation claims. *See* ECF No. 68 at 11:15-12:14. No further discovery is needed to resolve these issues.

D. Mr. Peters Is Not Collaterally Estopped by Last Personal Restraint Proceedings

Lastly, Defendant Peters was not a party or one in privity regarding the last personal restraint petition in the Washington State courts by Mr. Spencer. Consequently, Mr. Spencer cannot demonstrate the Supreme Court’s July 12, 2010 Ruling Denying Review (and the Court of Appeals decision that preceded it) is binding on Mr. Peters. The ruling therefore does not collaterally estop Mr. Peters.

1 **E. Conclusion**

2 For these reasons and for the reasons set forth above and in Mr. Peters' Motion for
3 Summary Judgment, this Court should grant summary judgment in favor of Mr. Peters and
4 dismiss all claims against him with prejudice. Mr. Spencer's motion under Rule 56(d) should
5 be denied.
6

7 DATED this 22nd day of June, 2012.

8 ROBERT M. McKenna
9 Attorney General

10 By: s/Daniel J. Judge
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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd of June, 2012, I caused to be electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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